

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.)	CASE NO. 1:08 CV 2755
)	
Plaintiff,)	JUDGE LESLEY WELLS
)	
v.)	
)	
SAP AMERICA, INC., et al.)	
)	
Defendants.)	
)	

**PLAINTIFF’S OBJECTIONS TO THE SECOND SUPPLEMENTAL TRIAL EXHIBIT
LIST OF DEFENDANTS SAP AMERICA, INC. AND SAP AG**

Plaintiff Hodell-Natco Industries, Inc., through undersigned counsel, submits the following Objections to the Second Supplemental Trial Exhibit List [ECF #268] filed by Defendants SAP America, Inc. and SAP AG (“Defendants” or “SAP”).

GENERAL OBJECTIONS

1. SAP’s Second Supplemental Exhibit List was filed on January 27, 2015, four months after the deadline set by the Court for the filing of Exhibit and Witness Lists and less than one month before trial. SAP’s Second Supplemental Exhibit List discloses forty-three (43) new exhibits, many of which were not marked at depositions or used by SAP during motion practice. SAP has already filed an earlier Supplemental Exhibit List [ECF #231] two weeks after the Trial Order deadline which identified ninety-five (95) new exhibits, most of which were also not marked at depositions or used during motion practice. Hodell submits that SAP’s Second Supplemental Exhibit List should be stricken pursuant to the Court’s Trial Order.

2. Plaintiff objects to all exhibits for which a proper foundation has not been laid.

Plaintiff specifically reserves the right to raise objections regarding foundation at the trial of this matter.

3. Plaintiff objects to all exhibits not marked at depositions taken in this matter, and specifically reserves the right to object to any such exhibits at the trial of this matter.

4. Plaintiff specifically reserves the right to raise at trial any objection to any exhibit or witness testimony proffered by any party on the grounds of relevance, hearsay, authenticity, or other grounds depending upon how such exhibits may be used, introduced, or offered at trial.

5. Plaintiff reserves the right to object to any exhibit depending upon the purpose for which it is offered at trial, and objects to any exhibit to the extent it is used for a purpose that is the subject of any motion in limine filed, or to be filed by Hodell.

6. Plaintiff reserves the right to object to the introduction of any exhibits or witness testimony on any basis that may become apparent during the course of trial including, without limitation, the grounds of parol evidence, hearsay and authenticity.

7. Plaintiff reserves the right to withdraw, amend, or supplement any of the objections made below prior to or during the trial of this matter.

8. With respect to each Exhibit identified on SAP's Second Supplemental Exhibit List, Hodell objects that each Exhibit will be inadmissible hearsay unless SAP can establish at trial that it will be used for a non-hearsay purpose and/or that an exception to the hearsay rule is applicable.

9. Hodell objects to the relevance and admissibility of each Exhibit identified on SAP's Second Supplemental Exhibit List under Fed.R.Civ.P. 401, 402, 403, 404, 405, 406, 407 and 408.

10. Hodell objects to the admissibility of each Exhibit identified on SAP's Second Supplemental Exhibit List on the basis that it is cumulative and will result in the undue delay of the trial of this matter.

SPECIFIC OBJECTIONS

Tr. Exhibit No.	<u>Description</u>	<u>Specific Objection</u>
5	ERP Software: Latest news on ERP software, New SAP Business One 2005	None at this time
63	Email from J. Woodrum to D. Kraus, D. Lowery and P. Killingsworth	Hearsay; Relevance; Foundation; Lack of Personal Knowledge; Improper Opinion [Fed.R.Evid. 402, 403, 404, 602, 701, 802, 805]
82	Email chain between D. Lowery, M. Sotnick et al.	None at this time
85	Email from D. Lowery to K. Reidl and O. Reidl	None at this time
119	Sizing Transaction Volumes	None at this time
123	FKOM Notes	None at this time
129	Statement of Direction SAP Business One	None at this time
130	Business Co-Innovation	None at this time
131	SAP Business One Quick Reference Guide for use by SAP Channel Partners Only	None at this time
138	SAP Business One Order Entry Forms	None at this time
143	Email chain between A. Myrick to J. Guagenti	None at this time

152	Email from D. Lowery to J. Woodrum	None at this time
202	Email chain between D. Lowery, K. Reidl, J. Woodrum and R. Elliott	Hearsay, Relevance, Completeness, Lack of Personal Knowledge, Improper Opinion, Foundation [Fed.R.Evid. 802, 805, 402, 403, 602, 701, 106]
240	Document from SAP Entitled "SAP Business One 'Sweet Spot' Overview for Partners: Targeting Prospects for the SAP Small-Business Solution"	None at this time
251	Email chain between U. Ziv, G. Shamia et al., attaching Key assumptions	None at this time
283	SAP Statement of Direction: SAP Business One	None at this time
295	Email from D. Lowery to T. Steffner and T. Lowe, attaching SBOUS Pricing Royalty Spreadsheet (LSI-Hodell Natco)	Hearsay, Relevance [Fed.R.Evid. 402, 802]
315	Article "HP is working with software makers to create bundles of their most popular small- and midsize-business applications preinstalled on HP systems, while IBM is bringing its Power 5 design to the SMB segment through its Express architecture"	Hearsay, Relevance [Fed.R.Evid. 402, 802]
322	Email chain between K. Reidl, S. Bykowski, R. Kott, J. Vislocky, and J. Clarke	None at this time
788	Email from D. Lowery to D. Van Leeuwen	None at this time

789	SAP Business One Overview	None at this time
790	Email chain between D. Kraus and G. Ashley	Hearsay, Relevance [Fed.R.Evid. 402, 802]
791	Email chain between K. Reidl, T. Lowe, D. Van Leeuwen and K. Evanski	Relevance [Fed.R.Evid. 402]
792	IBIS Group Check No. 009770 in the amount of \$52,500.00	Hearsay, Relevance, Lack of Personal Knowledge, Foundation [Fed.R.Evid. 802, 402, 602]
793	SAP Business One 2007: Section III. Summary	Completeness, Lack of Personal Knowledge, Foundation [Fed.R.Evid. 106. 602. 901]
794	Email from A. Myrick to D. Van Leeuwen and T. Lowe	None at this time
795	SAP Statement of Direction – SAP Business One	Completeness, Lack of Personal Knowledge, Foundation [Fed.R.Evid. 106, 602, 901]
796	Email from J. Woodrum to K. Reidl, D. Lowery, A. Myrick and J. Guagenti	Relevance [Fed.R.Evid. 402]
797	Email from J. Woodrum to K. Reidl	Hearsay, Relevance, Lack of Personal Knowledge [Fed.R.Evid. 802, 402, 602]
798	Email from K. Reidl to J. Woodrum	Hearsay [Fed.R.Evid. 802, 805]
799	Memo from O. Reidl to All Hodell-Natco Industries office employees and warehouse management employees	None at this time
800	Email from M. Weissman to J. Woodrum et al.	Relevance, Lack of Personal Knowledge, Foundation, Improper Opinion Testimony [Fed.R.Evid. 402, 602, 701]
801	Email from K. Reidl to B. Liebhard, R. Parish, M. Fladda et al.	None at this time

802	Email chain between K. Reidl, B. Liebhard, O. Reidl and D. Reidl	None at this time
803	Email chain between D. Lowery, K. Reidl, E. Kratus et al.	None at this time
804	Email chain between J. Woodrum, K. Reidl and D. Lowery	Relevance, Hearsay, Foundation, Unfair Prejudice, Confusion of Issues, Lack of Personal Knowledge [Fed.R.Evid. 402, 403, 602, 802]
805	Multiple email communications with J. Koehler	None at this time
806	Email from D. Lowery to O. Reidl et al.	Relevance, Unfair Prejudice, Confusion of Issues, Settlement Discussions [Fed.R.Evid. 402, 403, 408]
807	Email from D. Lowery to K. Reidl and O. Reidl	Relevance, Unfair Prejudice, Confusion of Issues, Settlement Discussions [Fed.R.Evid. 402, 403, 408]
808	Handwritten notes from Otto Reidl	Relevance, Unfair Prejudice, Confusion of Issues, Settlement Discussions [Fed.R.Evid. 402, 403, 408]
809	Email chain between P. Killingsworth, R. Mehnert-Meland, D. Kraus and M. Sotnick	Relevance, Lack of Personal Knowledge, Foundation, Improper Opinion Testimony, Hearsay [Fed.R.Evid. 402, 602, 701, 802, 805]
810	Handwritten notes from Otto Reidl	Hearsay [Fed.R.Evid. 802, 805]
811	Email chain between K. Reidl, S. Bykowski, R. Kott et al.	Duplicative of Exhibit 322

Date: February 5, 2014

Respectfully submitted,

/s/ P. Wesley Lambert

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*Attorneys for Plaintiff Hodell-Natco
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2015 a copy of the foregoing Objections to the Second Supplemental Trial Exhibit List of SAP America, Inc. and SAP AG was filed and served electronically upon counsel for SAP by operation of the Court's Electronic Filing System, and was sent by Email to the following parties:

LSI-Lowery Systems, Inc.
c/o Chris Kellett
cpk@carmodymacdonald.com

/s/ P. Wesley Lambert
P. Wesley Lambert (0076961)

[925859]